SUPREME COURT, U. S. **No. 763**

JAN 13 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1968

BERNHARD ROSEE,

Petitioner,

VS.

BOARD OF TRADE OF THE CITY OF CHICAGO, an Illinois corporation; JAMES E. BAGGOT, JR., and DONALD W. MORRISON, individually and d/b/a BAGGOT & MORRISON; HARRIS HAYWOOD; SIDNEY C. HAMPER, MARTIN H. MILEK, ROY C. LOFTUS, RICHARD ROSE, RAYMOND COMENZO, and THOMAS HERR, individually and as members of the Committee of Arbitration of the Board of Trade of the City of Chicago; JULIUS MAYER; WILBERT E. HUGE; ROBERT L. DAVID; THOMAS E. HOSTY; ROBERT C. LIEBENOW, individually and as President of the Board of Trade of the City of Chicago; WARREN W. LEBECK, individually and as Secretary of the Board of Trade of the City of Chicago; JAMES J. COUGHLIN; ALBERT W. KIBBY; and SAM GORDON,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

SECOND SUPPLEMENT TO REPLY TO PETITIONER

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Now comes the petitioner, pro se, and respectfully moves this Court for leave to file a second supplement to his

Reply brief for the reason that petitioner inadvertently omitted certain exhibits necessary for proper presentation of his case:

Petitioner for further reply to respondent's brief states:

Petitioner seeks to amplify his reply to paragraph 3 of the argument made by Respondents. (Resp. brief, p. 9). In paragraph 3, respondents state that there is nothing in the record to show that the order of the district court entered on February 16, 1965, was not complied with. An examination of the record and of the events which transpired on and after February 16, 1965, demonstrates that this is patently untrue.

It appears that on February 16, 1965, the district court refused to require the CEA to produce the daily and periodic reports filed by Baggot & Morrison with the agency and the daily confirmations submitted to the agency by the clearing corporation of the Board of Trade — as Kirby testified (App. Ct. of Appeals pp. 248-250)—because these documents were privileged (Appendix A, App. 1) or because these documents were subject to direct production from Baggot & Morrison (36 FRD 691).

The fact of the matter is that none of these documents was ever produced for petitioner's inspection by the CEA (or by the clearing corporation). The only exhibits supplied by the government to petitioner for examination are specified in the list of exhibits filed in the district court by the United States Attorney (Appendix B, App. 2) and in the list of exhibits submitted by petitioner to the lower court (Appendix C, App. 3).

The daily and periodic reports and the daily confirmations, mentioned above, which are vital and relevant to petitioner's case were withheld from petitioner. The dis-

trict court decided that duplicates of the documents in the possession of the CEA could be obtained directly from those who prepared and filed them, i.e., Baggot & Morrison and the clearing corporation (36 FRD 691). The court failed to understand that the documents produced by Baggot & Morrison had been forged, altered, falsified and manipulated and that petitioner could establish the true status of his account ONLY from the documents in the possession of the CEA and the Clearing House Corporation of the Board of Trade.

Congress never intended in the Commodity Exchange Act to prevent a litigant from obtaining records indispensable to proving the commitments resulting from all his transactions on the Board of Trade. One of the purposes of the CEA was to prevent cheating and defrauding of the public, including petitioner, by commission merchants.

Did the court act arbitrarily and contrary to Section 1.5 of the CEA in denying petitioner these records from the Commodity Exchange Authority (CEA Sec. 1.5, Appendix D. App. 7). This honorable court should decide this question which has never been adjudicated.

Petitioner's Subpoena *Duces Tecum* served on the C. E. A. and the clearing corporation of the Board of Trade in October, 1963 (App. Ct. of App. pp. 9-12) clearly specified all the foregoing documents. Yet neither the C.E.A. nor the clearing corporation of the Board of Trade complied.

The requirement that petitioner specify particular dates with respect to daily and periodic reports in the court's ruling of February 16, 1965 deprived petitioner *of his ability to show* his daily commitments and balances during the relevant period. (36 FRD 691).

The court in its opinion, states "that cancelled checks were examined" and "that daily segregation statements were examined." (App. Ct. of Appeals, p. 125), but certainly not by petitioner. Petitioner was deprived of his right to inspect and examine these documents which would have disclosed the fraud perpetrated on petitioner and exposed the true ownership of accts. No. 35 and No. 45 (See definition of segregated account (Com. Exch. Act. Sec. 1.32, Appendix E, App. 8).

On May 18, 1965, the court abruptly ordered discovery closed (App. Ct. of Appeals, pp. 23-24), before petitioner had an opportunity to gain access to relevant records.

Petitioner respectfully prays that this Honorable Court decide that none of the documents listed in petitioner's Subpoena Duces Tecum is privileged and that petitioner was denied proper discovery. Petitioner further prays that the Court grant such relief as may enable him to resume his occupation and earn a livelihood.

Respectfully submitted,

BERNHARD ROSEE
Petitioner, Pro Se

APPENDIX A

2-16-65 Docket, United States District Court for the Northern District of Illinois, No. 63 C 1348

2/16/65 Filed Opinion.

Pursuant to opinion this day filed Court orders the production pursuant to the subpoena duces tecum served by the plaintiff, Bernhard Rosee, on Roger E. Harper and filed with the Clerk of this Court on May 21, 1964, certain documents as specified in draft order. Court refuses to order production of the documents, as specified in draft, on the ground that they are privileged or irrelevant and vacates its order of August 24, 1964 denying the motion of Roger E. Harper to quash the aforementioned subpoena with respect to said documents.—Draft—Will, J.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BERNHARD ROSEE, *Plaintiff,*	)	
vs.	)	NO. 63 C 1348
BOARD OF TRADE, et al. *Defendant.*	)	

LIST OF EXHIBITS

EXHIBIT A — Report of Examination of Baggot and Morrison, submitted by Albert W. Kibby to the Commodity Exchange Authority on November 26, 1958.

EXHIBIT B — Certified record of proceedings in C.E.A., Docket No. 43 before the United States Department of Agriculture.

EXHIBIT C — Report of Examination of Baggot and Morrison, submitted by Clarence B. DeWitt to the Commodity Exchange Authority on May 26, 1959.

EXHIBIT D — Report of Audit Assignment No. 1998-D of Baggot and Morrison, submitted by G. E. Piala to the Commodity Exchange Authority on April 7, 1960.

EXHIBIT E — Report of Audit Assignment No. 1998-D of Baggot and Morrison, submitted by Clarence B. DeWitt to the Commodity Exchange Authority on April 8, 1960.

EXHIBIT F — Examination file of the Complaint of A. L. Schiffman against Baggot and Morrison.

EXHIBIT G — Investigative File No. 60-44 and Complaint of A. L. Schiffman against Baggot and Morrison.

EXHIBIT H — Additional records relating to the Complaint of A. L. Schiffman against Baggot and Morrison.

EXHIBIT I — Investigation of Complaint of Bernhard Rosee of November 1, 1960.

File relating to Audit Assignment 1998-B, relating to Baggot and Morrison.

File of Audit Assignment No. 1998-C, relating to Baggot and Morrison.

File of Audit Assignment No. 1998-D, relating to Baggot and Morrison.

Supplemental Report of Audit Assignment No. 1998-D, relating to Baggot and Morrison.

Supplemental Report Work Papers relating to Audit Assignment No. 1998-D, relating to Baggot and Morrison.

Edward V. Hanrahan
Edward V. Hanrahan
United States Attorney

EIK:mam

APPENDIX C

PLAINTIFF'S EXHIBITS IN SUPPORT OF BRIEF IN OPPOSITION TO MOTION OF CERTAIN DEFENDANTS KIBBY & GORDON TO DISMISS OR AMM. JUDGMENT

GR. 1

1. Letter from Schiffman to B & M dated 3/16/59
2. Check $3,000.00 from Schiffman to B & M dated 3/16/59

3. Letter from Schiffman to B & M dated 6/22/59
4. Check $3,000.00 from Schiffman to B & M dated 6/22/59
5. Memo card (B & M) — Ole Schiffman 6/23/59 "Acct. #2"
6. Letter 1/1/60 from B & M (Haywood) to Schiffman re loss
7. Letter 7/20/60 from T. W. Miller to CEA
8. Letter 8/15/60 from Caldwell (CEA) to Miller
9. Notation 9/3/60 by Ole Schiffman re B & M
10. Affidavit Brandt dated 6/7/65
11. Schiffman ledger sheets

GR. 2

1. B & M check 8/17/59 (?) to Rosee — $8,000.00
2. B & M bank statements — Continental Bank
3. B & M check to B & M 8/10/59 — $5,000.00
4. B & M check stubs — Continental Bank — 3 sheets
5. B & M check to Rosee 9/17/59 — $7,000.00
6. B & M ledger sheet — "Rosee a/c"
7. Letter from Rosee to B & M (m) dated 11/5/59
8. Group of 7 B & M checks

GR. 3

1. Four B & M ledger sheets (Schulman) and 3 sheets (Rosee)
2. Letter B & M 1/1/59 to Schulman
3. Letter Schulman 1/6/59 to B & M
4. Letter B & M 1/7/59 to Schulman
5. Check of B & M to Rosee 9/5/58 — $250.00
6. B & M "Comparison of Customer Deficit" etc. 10/31/58

GR. 4

1. CEA worksheet prepared by Kibby 11/14/58 and position of holdings (B & M) containing 21 sheets

GR. 5

(unnumbered: "Pl. ex. GR. 5). Five pages relating acct. 35 (CEA)

1. Single CEA shee showing positions
2. Memo B & M — Rosee 9/19/59
3. TC — Morrison
4. B & M worksheet (not original)
5.
6. TC (acct. 35)

7, 8.— CEA forms 203

9. B & M TC dated 9/23
10. B & M worksheets (Sept. 22-23)
11. CEA worksheet: "B & M — Rosee positions"
12. B & M memo & C. 9/30/59
13. CEA office memo from Diala to Caldwell
14. CEA — 2 sheets showing Alphab. arrange. accts.
15. Final deposition
16. B & M — 2 sheets re act. 35 (P & S)
17. B & M "No. 1282" P & S
18. Decision of arbitration committee
19. Bank statements of B & M (3 pages)

(NOTE — 201 reports 9/21-9/22 appear in this group but are not numbered and were presented to the court)

(NOTE — same comment as above re Kibby report to Caldwell dated 11/26/58).

GR. 6

1. Harper memo to file 10/14/60
2. Jacob affidavit — 6/7/65 and exhibits
3. Teletype messages — Caldwell — Kibby
4. Position journal —"Bust — went acct. 35"
5. Ledger sheets re acct. 35

GR. 7

1. B & M check to Security Benefit 11/19/59 — $250.00 and $1,292.84 12/11/59 and accompanying ledger sheet
2. Piala & Dewitt interview of B & M — doc dated 4/7/60 and Piala report to Caldwell dated 4/7/60
3. Letter 1/6/61 Quinn to CEA (Gordon)

GR. 8

GR. 9

B & M position journal & statement — acct. 35

GR. 10

Govt. worksheet B & M — Rosee and ledger sheet re "special account" (Ledger numbered 10-1)

GR. 11

(and 11-1) Eight TC and Report Dewitt of 5/26/59

GR. 12

Group of letters, telegrams and newspaper article relating to Rosee's request for investigation B of T

GR. 13

(unnumbered) Letter Rosee to B & M 12/17/59 in possession of govt.

13-2: Investigation CEA of Rosee comp.

13-1: Group (5 pgs) B & M ledger sheets relating to Rosee's accounts

"Addendum"

Plaintiff's reply exhibits — filed 11/4/65.

Pl. Rep. Ex. 1

Letter from Rosee to CEA (Harper) — 7/12/62
Letter from Caldwell to Rosee — 7/17/62

2. B & M checks:

Date	*Payee*	*Amount*
8/ 7/59	Rosee	$ 8,000.00
8/10/59	B & M	5,000.00
9/17/59	Rosee	7,000.00
9/17/59	B & M seg. acct.	20,000.00

3. B & M trading cards: 9/23/59, 9/29/59, 10/8/59, 10/26/59 and related P/S forms
4. Group of 7 BM TC relating to acct. 35 or 45 and related P/S forms
5. Letter Rosee to B & M dated 6/27/60
   Letter Rosee to Lebeck dated 9/9/60
   Letter Lebeck to Rosee dated 9/13/60
6. A-1 memo card Rosee holding 11/6
   A-2 through A-6 incl.— Various B & M Ledger-sheets

APPENDIX D

EXHIBIT 4

Sec. 1.5 Information confidential; disclosures to contract-market committees and officials. No officer or employee of the Department of Agriculture shall publish, divulge, or make known in any manner, except insofar as may be required in the performance of his official duties or by a court of competent jurisdiction, any facts or information regarding the business of any person which may come to the knowledge of such officer or employee through any inspection or examination of the reports or records of, or through any information given by, any person pursuant to the Commodity Exchange Act or these rules and regulations: *Provided, however,* That this prohibition shall not apply to disclosures made in good faith to the Business Conduct Committee or other proper committee or official of a contract market of matters in respect to which such

contract market has responsibility or duty under the Commodity Exchange Act, or which, in the judgment of the Act Administrator, adversely affect such market or are prejudicial to the interests of producers or consumers.

APPENDIX E

Sec. 1.32 Segregated account; daily computation and permanent record. The amount of money, securities, and property which must be in segregated account in order to comply with the requirements of section 4d (2) of the Commodity Exchange Act shall be computed by each futures commission merchant as of the close of the market each business day, based upon his accounting records. A permanent record of such computation shall be made and kept in readily accessible form, together with all supporting data.